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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,206	08/05/2003	Russell Powers	4002-3357/PC934.00	6826
52196	7590	06/06/2006	EXAMINER	
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			PELLEGRINO, BRIAN E	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 06/06/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/634,206	POWERS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian E Pellegrino	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-28,30,31,33-39 and 56-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 3-28,30,31,33-39 and 56-72 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

- I. Claims 3,5-9,17,20,22-25 drawn to a surgical kit with a spinal implant having an elongate member and bone anchors, instrumentation for a spinal surgery and packaging classified in class 623, subclass 17.11.
- II. Claims 10-16,56-59, drawn to a surgical kit with a spinal implant, instrumentation that degrades, packaging, classified in class 623, subclass 17.16.
- III. Claims 18,19,60-69, drawn to a surgical kit comprising a spinal implant, instrumentation for use in the surgery, packaging, and the instrument being a reversible shaft and having a handle, classified in class 606, subclass 61.
- IV. Claims 26,27,28,70-72, drawn to a surgical kit including a spinal implant, instrumentation for use in a spinal surgery, a template including images of sizes of implants and packaging, classified in class 606, subclass 99.
- V. Claims 4,30,31,33-39 drawn to a surgical kit comprising a spinal plate, bone screws, a driver and packaging, classified in class 606, subclass 104.

Inventions I,II,III,IV and V are related as products which share an alleged common utility of kits for spinal surgery but the common utility is not linked to a

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substantial structural feature. The products in this relationship are distinct if either or both of the following can be shown: (1) that the products encompass embodiments that are not required to perform the common utility or (2) that the products as claimed can be used to perform another utility. In this case, the invention of Group I includes an *elongate* spinal implant and bone anchors that can be integral not required by the other inventions or groups. The elongate implant could be a suture looped through anchors that would result in a different procedure not common with the other groups. Group II includes instrumentation that degrades that is not required by the other groups, where the instrumentation for use in the surgery of Group I and IV could be considered to be imaging instrumentation that does not degrade. Group III includes another different structural feature (a reversible shaft capable of performing two functions) not required by the other groups that only require instrumentation that apparently only performs one function. Group IV includes a template not required by the other surgical kits of Groups I-III,V and thus the surgeries could be performed without the template. Group V included a driver instrument that is not required by the other kits of Groups I-IV and thus the other surgeries of these groups could be performed by imaging instrumentation, a holding instrument, a cannula type instrument or injection type instrument.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification and different searches, restriction for examination purposes as indicated is proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Th (6:30am-4pm) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached at 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

A handwritten signature in cursive script that reads "Brian E. Pellegrino".